

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT McFADDEN,

Plaintiff,

-against-

SUPERINTENDENT WILLIAM KEYSER;
DEPUTY SUPERINTENDENT OF SECURITY
GARY SIPPLE; CAPTAIN KENNETH LETUS;
SERGEANT LISA WILSON; SERGEANT
RONALD MILLER; FOOD SERVICES
ADMINISTRATOR ANTHONY RIZZUTO;
HEAD COOK JOHN PAPAVASILOU; COOK
ANTHONY CARMINATI; INMATE
GRIEVANCE PROGRAM SUPERVISOR
CORY PROSCIA; HEAD CHAPLIN
OGBONNA STAINISLAUS; NURSE
KATHLEEN BUTTLES; C.O. WILLIAM
ELBERTH; C.O. EDMUND PUERSCHNER;
C.O. TIMOTHY DOEINCK; C.O. OFFICER
KINNE; C.O. RYAN SOUTHARD; C.O. PAUL
HOLLAND; C.O. STEVE RYDER; C.O.
GEORGE GILMOUR, SR.; HEARING
OFFICER MORROW,

Defendants.

USDC SDNY
DOCUMENT
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DOC #: _____
DATE FILED: 9/8/2023

23-CV-802 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff, who is currently incarcerated in the Mid-State Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, regarding events that allegedly occurred at the Sullivan Correctional Facility, between 2019 and 2022. By order dated February 1, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹ On February 27, 2023, this Court

¹ Prisoners are not exempt from paying the full filing fee, even when they have been granted permission to proceed IFP. See 28 U.S.C. § 1915(b)(1).

issued an Order of Service directing service upon all Defendants by the U.S. Marshals Service. (ECF No. 7.) On March 16, 2023, Plaintiff informed the Court of his belief that Defendant William Elberth and “several other defendants” no longer work at Sullivan Correctional Facility. (ECF No. 12.) In light of this information, the Court directed Plaintiff to identify which specific Defendants “he believes no longer work at Sullivan Correctional Facility and for whom he has no information regarding addresses for service.” (ECF No. 13.) In response, Plaintiff identified the following Defendants whom he believes no longer work at Sullivan Correctional Facility or for whom he has no information regarding addresses for service: Superintendent William Keyser; Deputy Superintendent of Security Gary Sipple; Captain Kenneth Letus; Food Services Administrator Anthony Rizzuto; Head Cook John Papavasilou; Cook Anthony Carminati; Inmate Grievance Program Supervisor Cory Proscia; Nurse Kathleen Buttles; Correctional Officer William Elberth; C.O. George Gilmour, Sr.; and Hearing Officer Morrow. (ECF Nos. 12, 14.)

On April 21, 2023, this Court directed Defendants’ counsel, the New York State Attorney General (“NYAG”), to ascertain the addresses of the following Defendants: Superintendent William Keyser; Deputy Superintendent of Security Gary Sipple; Captain Kenneth Letus; Food Services Administrator Anthony Rizzuto; Head Cook John Papavasilou; Cook Anthony Carminati; Inmate Grievance Program Supervisor Cory Proscia; Nurse Kathleen Buttles; Correctional Officer William Elberth; C.O. George Gilmour, Sr.; and Hearing Officer Morrow. (ECF No. 15.) On September 1, 2023, NYAG responded, identifying addresses for the above-listed Defendants. (ECF No. 38.)

I. *Valentin Order*

NYAG, however, simply identified the same address for Defendants as the one the Court directed service upon in its Order at ECF No. 7.² Some of these Defendants were already successfully served at Sullivan Correctional Facility: Defendants Carminati (ECF No. 21), Proscia (ECF No. 29), Papavasilou (ECF No. 35), and Morrow (ECF No. 37). The U.S. Marshals Service also attempted service upon Defendants Buttles (ECF No. 18), Elberth (ECF No. 20), Gilmour Sr. (ECF No. 22), Letus (ECF No. 25), Rizzuto (ECF No. 32), and Sipple (ECF No. 34) at Sullivan Correctional Facility—the same address identified in NYAG’s response at ECF No. 38. A week prior to NYAG’s response at ECF No. 38, the U.S. Marshals Service filed process receipts showing that service upon these Defendants at Sullivan Correctional Facility was unsuccessful. As such, NYAG is again directed—pursuant to *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997) and in accordance with this Court’s prior *Valentin* order at ECF No. 15—to ascertain addresses for Defendants Buttles, Elberth, Gilmour Sr., Letus, Rizzuto, and Sipple. Defendants are further directed to ascertain addresses for Defendants Keyser,³ Mark Puerschner, and Edmund Puerschner.

Upon receipt of this information the Court will issue a supplemental order of service, directing service upon these Defendants.

CONCLUSION

NYAG is ordered to ascertain the addresses of Defendants Buttles, Elberth, Gilmour Sr., Letus, Rizzuto, Sipple, Keyser, Mark Puerschner, and Edmund Puerschner.

NYAG is instructed to provide this information to Plaintiff and the Court within 30 days.

² The Court issued a first *Valentin* order at ECF No. 15 because Plaintiff believed several defendants “no longer work at Sullivan Correctional Facility.” (ECF No. 13.)

³ The U.S. Marshals Service attempted service upon Defendant Keyser at Sullivan Correctional Facility. (ECF No. 23.) NYAG now identifies Defendant Keyser’s address as the Harriman State Campus of the Department of Corrections and Community Supervision. (ECF No. 38.) Defendant Keyser, however, is believed to be “retired,” according to notes left by the U.S. Marshals Service at ECF No. 23.

The Clerk of Court is kindly directed to amend the caption to include Defendant Mark Puerschner.

The Clerk of Court is also directed to mail a copy of this Order to *pro se* Plaintiff at his address on ECF and to show service on the docket.

SO ORDERED.

Dated: September 8, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge